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ON PAGE A-1

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# Justices Give Agents Latitude in Wiretapping Calls

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## LIMITS ON WHAT CAN BE LISTENED TO ARE WEAKENED

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Federal agents have wide discretion to decide for themselves what telephone calls they will monitor while operating wiretaps, the Supreme Court ruled 7-2 today.

The decision significantly limited a provision of federal law telling agents they must try to minimize conversations overheard during "bugging."

Justice William H. Rehnquist's opinion for the majority stressed that

agents do not violate the federal law merely because they take no steps in advance to screen out the conversations to which they won't listen.

The test of whether they have violated the law, the majority declared, is to be decided after the wiretapping is finished, based on all the facts in each case.

Two dissenting justices complained that the new decision "eviscerates" Congress' attempt to protect individuals' privacy under the 1968 law permitting wiretapping under court orders.

TODAY'S RULING was one of two actions the justices took on wiretapping.

In a separate order, the justices turned down a major test case on the power of federal agents to break into private property to install or maintain a "bug."

A lower federal court had ruled that once a federal judge authorized the bugging itself, agents could as-

sume they also had the authority to secretly enter private property to put in a listening device or to return later to make sure it was functioning.

Because the court declined to hear an appeal of that decision, agents are left at least temporarily with apparent authority to break in as part of their bugging operations.

The court's 7-2 decision on the meaning of the so-called "minimization" requirement of federal wiretap law came in a test case growing out of a narcotics prosecution in the Washington area.

Federal agents had court authority to install a wiretap on the telephone in an apartment in Northwest Washington as well as on the home telephone here of a suspect in the probe.

Agents made no attempt to limit the conversations to which they listened during the bugging. On one telephone, they listened to every one of the 384 calls made to that phone.

After the case was over, an analysis of the telephone calls showed that six of 10 calls had nothing to do with the narcotics activity the agents were investigating.

THE APPEAL in the case was taken to the Supreme Court by Frank R. Scott and Bernis L. Thurmon, convicted of narcotics charges and sentenced to 10 years each in prison.

The U.S. Court of Appeals ruled here in 1975 that agents do not violate the 1968 law if, after the fact, the court is satisfied that their monitoring was "reasonable."

Even the agents' failure to take any action to minimize their listening does not, by itself, prove that they were acting illegally, the lower court said.

The Supreme Court agreed with that result today, saying the courts should not engage in "blind reliance" on the percentage of non-criminal calls that were intercepted as proof that the agents acted illegally.

The ruling, in practical effect, means that federal courts will have to decide on a case-by-case basis whether agents heard more than they should have.

The court's separate action on the bugging issue grew out of an investigation of a numbers operation in Brooklyn, N.Y., in 1972 and 1973.

After getting court approval to install a bug at a bar, federal agents used a passkey to enter the bar secretly at night to install two listening devices. They went back to the bar three other times, either to move one of the devices or to change the batteries to be sure they were functioning.